

THE GENERAL SERVICES ADMINISTRATION  
CIVILIAN BOARD OF CONTRACT APPEALS

ARCTIC SLOPE NATIVE ASSOCIATION,  
LTD.

Appellant,

v.

INDIAN HEALTH SERVICE; UNITED  
STATES DEPARTMENT OF HEALTH  
AND HUMAN SERVICES

Appellees.

CBCA 190-ISDA through 297-ISDA  
(IBCA 4794-4803-2006)

**NOTICE OF SUPPLEMENTAL AUTHORITY IN CONNECTION WITH  
GOVERNMENT-APPELLEE'S MOTION TO DISMISS**

Appellee, the Indian Health Service (IHS), hereby gives notice of additional authority issued since oral argument and the close of briefing on its Motion to Dismiss and Cross Motion for Partial Summary Judgment.

In the attached decision, *Menominee Indian Tribe of Wisconsin v. United States of America*, Civil Action No. 07-812 (RMC), (D.D.C. March 14, 2008), the United States District Court for the District of Columbia ruled that claims filed after the Contract Disputes Act's ("CDA") six-year presentment requirement are time barred. The Court completely rejected the application of class action and equitable tolling, stating that "[b]ecause the Tribe did not raise claims related to its 1996 through 1998 CSC funding within six years of their accrual, ... these

claims must be dismissed for lack of subject matter jurisdiction.” Slip Opinion at 2. The court held that “[a]dministrative presentment to the contracting officer is a mandatory jurisdictional requirement...” and “[b]ecause federal court jurisdiction cannot attach until there has been administrative presentment, tolling does not apply.” Slip Op. at 2 n.2.

In addition to dismissing the claims for time-barred years, the court acknowledged the insufficiency of the appropriation in the cap years and affirmed that the Secretary “cannot disburse funds he does not have or amounts in excess of limitations set by Congress.” Slip op. at 4. However, the court did not dismiss the claims in cap years believing it lacked enough information to make a final determination on the matter. Slip op. at 4.

Respectfully submitted,

S/ Sean Dooley

March 20, 2008

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the enclosed NOTICE OF SUPPLEMENTAL AUTHORITY IN CONNECTION WITH GOVERNMENT-APPELLEE'S MOTION TO DISMISS was sent via mail and email this 20th day of March 2008 to:

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